

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FORT BRAGG UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009020449

ORDER DENYING DISTRICT'S
MOTION FOR STAY PUT

On February 12, 2009, the Fort Bragg Unified School District ("District") filed a request for due process hearing, and on February 25, 2009, filed a motion for stay put. Student filed no opposition to District's stay put motion.

Student is a ten-year-old fifth grader who is eligible for special education under the primary disability category of emotional disturbance, and the secondary disability category of mental retardation. Student has also been diagnosed with Down Syndrome. Since kindergarten, Student has demonstrated aggressive and non-compliant behavior. Consequently, Student's educational placements have been special day classes (SDC) in order to address his educational and behavior issues.

On October 3, 2008, Student assaulted his teacher, which prompted the District to file, on October 15, 2008, a request for an expedited due process hearing to change Student's placement to an appropriate interim alternative educational setting (IAES). Specifically, the District proposed to place Student at the Edgewood Residential Facility and Edgewood Nonpublic School (Edgewood). This proposed placement was not to exceed 45 school days. On November 13 and 14, 2008, the Office of Administrative Hearings (OAH) heard the matter, and issued a decision on December 8, 2008 ordering that "the District [could] change Student's placement to Edgewood for a period not to exceed 45 school days without parental consent." The District calculated the 45 school day period to expire on March 6, 2009. However, Edgewood did not accept Student into their facility.

On February 12, 2009, the District and Student's mother entered into an addendum to the current IEP¹, which provided a residential placement for Student for a period of 21 days,

¹ The addendum to the IEP, which the District attached to its stay put motion, does not list the date of Student's current IEP. Under the heading of "Date of Current IEP," the document states "annual 10/15/08." However, the District's request for due process hearing indicates that following a display of dangerous and aggressive behaviors, Student's placement was temporarily changed to a home setting on November 5, 2007. Thereafter, Student's mother had consented to an IEP amendment dated June 24, 2008, which provided for Student's transition back to full six-hour school days in a SDC at Dana Elementary School. The District implemented the June 24, 2008 IEP

with enrollment at an associated public school SDC. Specifically the IEP amendment stated the following:

Per administrative law judge order, [Student] is to be placed in a 45 day interim alternative placement, December 5, 2008 – March 5, 2009. This placement is Turning Point w/Orr Creek School.

The placement at Turning Point and Orr Creek School was considered to be comparable to the Edgewood placement. Under the heading of “Start/End Date,” the IEP amendment stated “2/12/09 – 3/5/09.” The District implemented the February 12, 2009 IEP amendment.

On February 12, 2009, the same date of the IEP amendment, the District filed a request for due process hearing seeking an order determining that the least restrictive environment to address Student’s individualized needs and to provide Student with a FAPE is the residential facility and associated public school SDC set forth in the February 12, 2009 IEP amendment: Turning Point and Orr Creek School. The District now requests an Order of Stay Put directing that Student’s current educational placement be implemented during the pendency of the dispute.

The District contends that the February 12, 2009 IEP amendment is the last-agreed upon and implemented IEP. As such, Student should continue to remain in the placement set forth in the February 12, 2009 IEP amendment until this matter is adjudicated. The District is correct that the February 12, 2009 IEP amendment is the last-agreed upon and implemented IEP. However, the placement outlined in the February 12, 2009 IEP amendment was intended to be a temporary placement, and therefore cannot provide the basis for a student’s “stay put” placement.

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student’s educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2nd Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, a pupil’s current educational placement is typically the placement called for in the student’s IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *Zvi D. v. Ambach* (2nd Cir. 1989) 694 F.2d 904, 907.)

amendment. All subsequent IEPs, with the exception of the addendum dated February 12, 2009, had not received parental consent.

In the instant matter, Student's placement in the Turning Point residential facility and in the associated SDC at Orr Creek School was adopted for the purpose of complying with OAH's December 8, 2008 order, which set forth an IAES permitting the District to "change Student's placement to Edgewood for a period not to exceed 45 school days without parental consent." The unambiguous language of the order clearly delineates a temporary placement for the Student. When the Edgewood facility declined to accept Student, the District and Student's mother agreed to a comparable placement, as set forth February 12, 2009 IEP amendment, for the specific purpose of addressing OAH's order. Both parties expressly agreed that the placement would remain in effect for only 21 days (February 12, 2009 to March 5, 2009), evidencing that the parties intended for the placement to be an interim, short-term, temporary placement, and not a long-term one. Given the temporary nature of the placement, the Turning Point residential facility and the associated SDC at Orr Creek School cannot provide the basis for the Student's stay put placement. The District's motion for stay put is, therefore, denied.

ORDER

The District's motion for stay put is denied.

Dated: March 03, 2009

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings